

limitation period for "all actions upon liability created by a federal statute where no period of limitations is provided in said federal statute" should apply. The court held that such state statutory period did not apply because Price-Anderson provided for a limitations period by mandating the application of state substantive law and that statutes of limitations are substantive).

²³Although federal courts have original jurisdiction over such actions, states have concurrent jurisdiction. See §2210(n)(2). Subject to removal upon motion, public liability actions may be filed in state courts; in a case in which such action proceeds in state court, §2014(hh) requires that the law of the State in which the nuclear incident occurred determine the rules for decision.

²⁴See Article III, §2, cl. 1, U.S. Constitution: "The Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution. . . ."

The issue of whether Congress exceeded its authority under Article III in creating "arising under" jurisdiction even where stipulating that such actions were to be derived from state law has been addressed in a number of opinions issued under the Amendments Act. In vacating and remanding a district court holding that the Amendments Act was unconstitutional, the Circuit Court of Appeals in *Re TMI Litigation Cases* Consol. II, 940 F.2d 832, 845 (3d Cir. 1991) stated: "It could not be clearer that Congress intended that there be federal jurisdiction over claims removed pursuant to the Amendments Act; the statutory language is explicit." The court, in analyzing subject matter jurisdiction, noted that the Amendments Act "contains both federal and state elements. While the public liability cause of action itself and certain elements of the recovery scheme are federal, the underlying rules of decision are to be derived from state law."

Id. at 854.

²⁵See *In Re TMI Litigation Cases* Consol. II, supra n. 15 at 857-58.

²⁶Note, for example, that under §170(s); 42 U.S.C. §2210(s) "No court may award punitive damages in any action with respect to a nuclear incident . . . against a person on behalf of whom the United States is obligated to make payments under an agreement of indemnification covering such incident. . . ."

²⁷See, however, §167 of the Atomic Energy Act, 42 U.S.C. §2207, authorizing the Commission to pay "any claim for money damage of \$5,000 or less against the United States for bodily injury, death, or damage . . . where such claim is presented to the Commission in writing within one year after the accident or incident out of which the claim arises. . . ."

²⁸If a federally created right of action has a specific statute of limitations, such a right is enforced free from any state limitation period. In such a case, the provision is regarded as one of substantive right setting a limit to the existence of the statutory obligation. Where a federal right has been created without providing a limitation of actions to enforce such a right, since there is no federal statute of limitations of general application, the courts generally apply the forum state's statute of limitations. As such, federal courts will borrow the periods of limitation prescribed by the state where Congress has created a federal right but has not prescribed a period for its enforcement. See 51 am jur 2d limitation of actions §74; 53 C.J.S. limitations of actions §33.

²⁹Henry Cohen wrote Part III of the memorandum; Ellen Lazarus wrote Parts I and II.

ATF'S PURCHASE OF 22 OV-10D AIRCRAFT

Mr. GRASSLEY. Mr. President, a news article in this morning's Washington Times says the Bureau of Alcohol, Tobacco and Firearms recently purchased 22 OV-10D aircraft from the Defense Department.

These aircraft were used by the Marine Corps in the Vietnam war for close air support in combat. They were also used in Operation Desert Storm for night observation.

The aircraft are heavily weapons-capable, especially from a law-enforcement perspective. ATF says the planes have been stripped of their weapons. Their purpose, according to ATF, is for surveillance. The planes can locate

people on the ground by detecting their body heat.

It's no secret that the ATF is undergoing intense public scrutiny. It has done some real bone-headed things. It has been criticized for enforcing the law while crossing the line of civil rights protections.

ATF's credibility will be even further tested the next 2 weeks when joint committee hearings are held in the other body on the Waco matter. And the Senate Judiciary Committee also will hold hearings on Waco in September.

I raise this issue today, Mr. President, because the purchase of these aircraft in the current climate might continue to feed the public's skepticism, and erode the public's confidence in our law enforcement agencies.

For that reason, it is incumbent upon ATF to fully disclose and fully inform the public as to the purchase of these aircraft.

First, what, specifically, will they be used for?

Second, where will they be located?

Third, what assurances are there that the planes will remain unarmed?

The sooner these questions are answered by ATF—openly and candidly—the less chance there is that the public's skepticism will grow.

Mr. President, the continued credibility of the ATF is on the line, in my judgment. At times such as these, when scrutiny is at its highest, the best strategy is to go on the offense. Spare no expense in disclosing fully and swiftly. Because full and swift disclosure is the first step in restoring credibility.

The ATF's credibility is important not just for itself, but for law enforcement in general. There is much work to do to restore the public's trust and confidence. I hope that ATF will step up to the challenge and provide the necessary assurances.

Mr. President, I ask unanimous consent that the Washington Times article, written by Jerry Seper, be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

[From the Washington Times, July 18, 1995]

ATF GETS 22 PLANES TO AID SURVEILLANCE

WEAPONS-CAPABLE AIRCRAFT REPAINTED

(By Jerry Seper)

The Bureau of Alcohol, Tobacco and Firearms has obtained 22 counterinsurgency, heavy-weapons-capable military aircraft.

The 300-mph OV-10D planes—one of several designations used by the Marine Corps during the Vietnam War for gunfire and missile support of ground troops, and by the Air Force during Operation Desert Storm for night observation—have been transferred from the Defense Department to ATF.

The turboprop aircraft, which will be used for day and night surveillance support, were designed to locate people on the ground through their body heat.

When used by the military services, the planes were equipped with infrared tracking systems, ground-mapping radar, laser range-finders, gun sights and 20mm cannons.

ATF spokeswoman Susan McCarron confirmed yesterday that the agency had obtained the aircraft but noted they had been stripped of their armament. She said that nine of the OV-10Ds were operational and that the remaining 13 were being used for spare parts.

"We have nine OV-10Ds that are unarmed; they have no weapons on them," Ms. McCarron said. "They are being used for surveillance and photography purposes. The remainder are being used for spare parts."

Ms. McCarron said the aircraft were obtained by ATF from the Defense Department "when DOD was getting rid of them," and that other agencies also had received some of the airplanes.

General Service Administration records show that some of the unarmed aircraft also were transferred to the Bureau of Land Management for use in survey work, while others went to the California Forestry Department for use in spotting fires and in directing ground and aerial crews in combating them.

Other models of the OV-10 also are being used by officials in Washington state for nighttime surveillance of fishing vessels suspected of overfishing the coastal waters.

The transfer of the aircraft to ATF comes at a time of heightened public skepticism and congressional scrutiny of the agency's ability to enforce the law without trampling on the rights of citizens.

The ATF's image suffered mightily in the aftermath of its 1993 raid and subsequent shootout at the Branch Davidian compound in Waco, Texas, during which four agents and six Davidians were killed. It sustained another public-relations blow after it was revealed that ATF agents helped organize a whites-only "Good O' Boys Roundup" in the Tennessee hills.

Hearings of the Waco matter begin tomorrow in the House. A Senate Judiciary Committee hearing on the racist trappings of the roundup is scheduled for Friday.

One Senate staffer yesterday said there was "some real interest" in the ATF's acquisition of the aircraft, and that questions "probably will be asked very soon of the agency" about the specifics of their use and locations where they have been assigned.

According to federal law enforcement sources and others, including two airline pilots who have seen and photographed the ATF planes, two of the combat-capable aircraft—known as "Broncos"—have been routed to Shawnee, Okla., where they were painted dark blue over the past month at an aircraft maintenance firm known as Business Jet Designs Inc.

Michael Pruitt, foreman at Business Jet Designs, confirmed yesterday that two of the ATF aircraft had been painted at the Shawnee site and that at least one more of the OV-10Ds "was on the way." Mr. Pruitt said the aircraft were painted dark blue with red and white trim. The sources said the paint jobs cost the ATF about \$20,000 each.

The firm's owner, Johnny Patterson, told associates last month he expected to be painting at least 12 of the ATF aircraft but was unsure whether he could move all of them fast enough through his shop. Mr. Patterson was out of town yesterday and not available for comment.

According to the sources, the ATF's OV-10Ds, recently were overhauled under the government's Service Life Extension Program and were equipped with a state-of-the-art forward-looking infrared system that allows the pilot to locate and identify targets at nights—similar to the tracking system used on the Apache advanced attack helicopter.

Designed by Rockwell International, the OV-10D originally was outfitted with two 7.62mm M-60C machine guns, each with 500

rounds of ammunition. It also was modified to carry one Sidewinder missile under each wing. Snakeye bombs, fire bombs, rocket packages and cluster bombs.

The OV-10D can carry a 20mm gun turret with 1,500 rounds of ammunition.

During the Vietnam War, two OV-10Ds were used for a variety of missions during a six-week period and flew more than 200 missions in which they were credited with killing 300 enemy troops and saving beleaguered outposts from being overrun by the communists.

TRIBUTE TO BEULAH G. VARNELL

Mr. HEFLIN. Mr. President, I want to commend and congratulate an outstanding employee of the Department of Agriculture in Alabama, Beulah G. Varnell. She has been working in various capacities for the Department there for over 50 consecutive years.

Prior to joining the Department of Agriculture's Consolidated Farm Service Agency [CFSA], Mrs. Varnell worked at the Red Stone Arsenal in Huntsville, AL, for a short period of time. In 1945, she began work as Assistant Clerk of Conservation Materials and the next year became Principal Conservation Material Clerk. She progressed steadily over the next few years to Senior Clerk in 1949.

Beulah Varnell has demonstrated exceptional ability to assuming and carrying out many programs, with primary responsibilities for administrative, price support, conservation, wool and mohair, and feed grain. She became Chief Program Assistant in 1966 and is known across the State for her knowledge of CFSA programs and her extraordinary ability to get the job done and done well. This is reflected by her willingness to help out with all other programs in the county office.

She has worked for four different CEO's during her 50 years with the agency. She has always donated annual leave to the leave transfer recipients and maintains 240 hours of annual leave at the end of each year as indicated by all available records. She currently has accumulated 4,103 hours of sick leave, and has never been off work for any extended period of time. There is a familiar anecdote that Beulah once had a wreck while on her way to work and asked that her typewriter be brought to her home so that she could continue her duties uninterrupted. That is dedication.

Beulah married Royce Varnell, who is retired from the Tennessee Valley Authority, in 1950. She is very close to her family, including her brother, 3 sisters, nieces, and nephews. The Varnell's have two farms in Rogersville, AL, one planted with soybeans, the other maintaining several head of cattle. Beulah has lived on a farm in Rogersville all her life and has been associated with all aspects of farming through personal experiences and her job with CFSA.

She is an active member of the Rogersville Church of Christ where she teaches a class. Beulah and Royce have

a garden every year and also maintain a numerous assortment of flowers around their home. In her spare time, she enjoys crocheting and quilting. She also enjoys spending time at the camphouse on the Tennessee River, visiting with friends and family.

In short, Beulah Varnell enjoys life to its fullest, and is happiest when helping others. She is a great asset to CFSA and the Department of Agriculture, having always remained totally dedicated to the needs of county producers. I congratulate her and salute her as one of the best examples of public service our Nation has to offer.

IS CONGRESS IRRESPONSIBLE? LOOK AT THE ARITHMETIC

Mr. HELMS. Mr. President, the impression will not go away: The \$4.9 trillion Federal debt stands today as a sort of grotesque parallel to television's Energizer bunny that appears and appears and appears in much this same way that the Federal debt keeps going and going and going—up, of course.

A lot of politicians talk a good game—and talk is the operative word—about reducing the Federal deficit and bringing the Federal debt under control.

Control, Mr. President? As of yesterday, Monday, July 17, at the close of business, the total Federal debt stood at exactly \$4,927,653,309,340.54, or \$18,705.46 per man, woman, and child on a per capita basis. *Res ipsa loquitur*. Some control.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, morning business is closed.

COMPREHENSIVE REGULATORY REFORM ACT

The PRESIDING OFFICER. The Senate will now resume consideration of S. 343, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 343) to reform the regulatory process and for other purposes.

The Senate resumed consideration of the bill.

Pending:

Dole amendment No. 1487, in the nature of a substitute.

Levin (for Glenn) amendment No. 1581 (to amendment No. 1487), in the nature of a substitute.

Ashcroft amendment No. 1786 (to amendment No. 1487), to provide for the designation of distressed areas within qualifying cities as Regulatory Relief Zones and for the selective waiver of Federal regulations within such zones.

The PRESIDING OFFICER. The Senator from Missouri [Mr. Ashcroft].

AMENDMENT NO. 1786

Mr. ASHCROFT. Mr. President, throughout the current debate on S. 343, regulatory reform, little has been said about the devastating effects of

regulations on America's urban core inner-city centers. Yet it is precisely our Nation's most distressed urban areas which are really threatened as a result of the onerous implications of some of the regulations on the city center. I believe it is time for us to look at those regulations as they relate to the cities and the potential for job growth and development in those cities. And it is time for us to have a look at whether or not we can mitigate the impacts of regulation against some of the areas where job development and growth are most challenging.

So I have submitted an amendment which is called the Urban Regulatory Relief Zone Act of 1995, an amendment to Senate bill 343, which is designed to try to provide that kind of relief. I believe it is in the best interests of our urban centers to be able to develop waivers so when we really find the regulations are hurting the health, the safety, the well-being, the security of our citizens, that, in fact, those regulatory provisions can be waived in cooperation with the Federal Government to provide an opportunity for jobs.

Mrs. HUTCHISON addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mrs. HUTCHISON. Mr. President, will the Senator yield?

The PRESIDING OFFICER. The Senator from Texas [Mrs. HUTCHISON] is recognized.

AMENDMENT NO. 1789 TO AMENDMENT NO. 1786

(Purpose: To provide for the designation of distressed areas within qualifying cities as regulatory relief zones and for the selective waiver of Federal regulations within such zones)

Mrs. HUTCHISON. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Texas [Mrs. HUTCHISON], for herself and Mr. ASHCROFT, proposes an amendment numbered 1789 to amendment No. 1786.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

In lieu of the matter proposed to be added, add the following:

“TITLE II—URBAN REGULATORY RELIEF ZONES

SECTION 201. SHORT TITLE.

This Act may be cited as the “Urban Regulatory Relief Zone Act of 1995”.

SEC. 202. FINDINGS.

The Congress finds that—

(1) the likelihood that a proposed business site will comply with many government regulations is inversely related to the length of time over which a site has been utilized for commercial and/or industrial purposes in the past, thus rendering older sites in urban areas the sites most unlikely to be chosen for new development and thereby forcing new development away from the areas most